



U.S. Department of Housing and Urban Development

Public and Indian Housing

Special Attention of:

Notice PIH 99-22 (HA)

HAs with Section 8 Moderate
Rehabilitation; Secretary's
Representatives; State and Area
Office Directors of Public Housing;

Issued: 05/20/99

Expires: 09/30/99

Cross References: PIH 98-62 (HA)

Subject: Clarification of PIH Notice 98-62 Governing FY 99 Renewal of Expiring Section 8 Moderate Rehabilitation Housing Assistance Payments (HAP) Contracts.

1. PURPOSE: This Notice supplements, clarifies and modifies the procedures outlined in Notice PIH 98-62, dated December 15, 1998. Notice PIH 98-62 provides instructions for implementing Sections 524(a)(1) and (2) of the Multifamily Assisted Housing Reform Act of 1997 (MAHRA), as amended by Section 597 of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (FY '99 Appropriations Act) governing the renewal of housing assistance payments (HAP) contracts under the Section 8 moderate rehabilitation (Mod Rehab) program.

2. BACKGROUND: Sections 524 (a)(1) and (2) of MAHRA are the non-Mark-to-Market renewal provisions for Section 8 project-based HAP contracts expiring during FY '99. The FY '99 Appropriations Act was enacted on October 21, 1998 as Public Law 105-276. Section 597(b)(2) of the FY '99 Appropriations Act amended Section 524(a)(2) of MAHRA as it relates to regular Section 8 Mod Rehab HAP contracts expiring during FY '99. All references to MAHRA henceforth mean MAHRA as amended by the FY '99 Appropriations Act.

3. APPLICABILITY: This Notice applies to all units in a multifamily housing project under a Section 8 Mod Rehab HAP contract expiring on or after October 1, 1998. This Notice is not applicable to the Section 8 Moderate Rehabilitation Single Room Occupancy Program.

4. NOTICE OF NON-RENEWAL, OWNER DISPUTE OF REJECTION, FINAL DECISION AND ADMINISTRATIVE APPEAL:

A. NOTICE:

If an owner of a Mod Rehab property is determined to be ineligible for HAP contract renewal under Paragraph 11 of PIH Notice 98-62, the PHA must notify the owner in writing of the non-renewal and state the reasons for the rejection in

all cases. PIH Notice 98-62 specifies that only certain actions or omissions require the PHA to notify the owner of non-renewal and provide the owner the opportunity to cure. This Notice revises PIH Notice 98-62 to require PHAs to provide owners with written notice of non-renewal in all cases including those cases where the PHA has found material and repeated violations.

B. OWNER DISPUTE OF REJECTION:

After receipt of the PHA's notification of non-renewal, an owner will have 30 calendar days to provide written objections to the PHA or to cure the underlying basis for the objections if the rejection is based on a curable item. If the owner does not submit written objections during the 30-day period, the decision will become a final determination under section 516(c) of MAHRA and is not subject to judicial review.

C. FINAL DECISION:

If an owner submits written objections or asserts that the underlying basis for the objections is cured, after consideration of the matter, the PHA will send the owner, within 10 calendar days of receipt of the owner's objections, a final determination affirming, modifying, or reversing the rejection and setting forth the rationale for the final decision.

D. APPEAL PROCEDURES:

An owner may submit a written appeal to the HUD Public Housing HUB or Program Center with jurisdiction over the PHA that rendered the decision within 10 calendar days of receipt of written notice of the final decision, contesting the decision and requesting a conference with HUD. At the conference, the owner may submit, in person, in writing, or through a representative, its reason for appealing the decision. A representative of the PHA that issued the decision under appeal may participate in the conference and submit in person, in writing, or through a representative, the basis for the original decision.

Within 20 calendar days after the conference, or 20 days after the agreed upon extension of time for submission of additional materials by or on behalf of the owner, HUD will advise the owner in writing of the decision to terminate, modify, or affirm the original decision.

5. ONE-YEAR STATUTORY NOTIFICATION REQUIREMENT: Section 549 of the FY '99 Appropriations Act amends section 8(c)(9) of the USHA of 1937 which required owners to provide written notice to HUD and each family at least 180 days before the expiration of a Section 8 HAP contract. Section 8(c)(8)(A) of the USHA of 1937, as amended, requires that not less than one year before the termination or expiration of the Section 8 Mod Rehab HAP contract, the owner must provide written notice to tenants assisted under the Mod Rehab HAP contract. This notice is required to inform the project's residents of the impending HAP contract expiration. The law also requires that the owner submit the notice to HUD; however, since local PHAs administer the Mod Rehab program, the owner shall submit the notice to the appropriate PHA instead of HUD. Section 8(c)(8)(A) became effective on the date of enactment of the FY '99 Appropriations Act (October 21, 1998).

Owners who gave the 180 day notice prior to October 21, 1998 will be considered to have fulfilled the statutory notification requirement. Owners who give notice to tenants and the appropriate PHA on or after October 21, 1998 must fulfill the entire one year notification requirement. If adequate time is not remaining on the HAP contract to cover the full one year notification period, and the owner does not wish to renew the HAP contract for an additional year, in order to fulfill the one year notification requirement, the owner and the PHA may enter into a short term renewal contract for the period needed to satisfy the one year notification requirement. The rents under any short term renewal HAP contract where the owner has not submitted a request for mortgage restructuring in accordance with the interim rule titled Multifamily Housing Mortgage and Housing Assistance Restructuring Program and Renewal of Expiring Section 8 Project-Based Assistance Contracts published in the September 11, 1998, Federal Register Volume 63, Number 176 (interim rule), must be established in accordance with paragraph 8 of PIH Notice 98-62.

6. MOD REHAB HAP CONTRACTS WITH MORTGAGES INSURED OR HELD BY HUD WHERE OWNER REQUESTS A SECTION 8 CONTRACT RENEWAL AS PART OF A RESTRUCTURING PLAN:

A Mod Rehab property eligible for restructuring is defined as a multifamily housing project with a mortgage insured or held by HUD under the National Housing Act with project-based Section 8 assistance expiring on or after October 1, 1998, and with rents for assisted units in excess of comparable market rents. If an owner of an eligible property requests a restructuring plan and a Section 8 HAP contract renewal in accordance with the September 11, 1998 interim rule (a final rule will be issued shortly) and Notice H 98-34, the contract administration will remain with the PHA during the restructuring analysis and negotiation.

A. PHA ACTION:

The PHA must determine the amount of annual budget authority that will be necessary to renew the Mod Rehab HAP contract for a 12 month period and submit the request to the appropriate HUD Office of Public Housing HUB Director or Program Center Coordinator. Section 514(c) of MAHRA authorizes the renewal of Section 8 HAP contracts eligible for restructuring at existing rent levels for a period sufficient to facilitate the implementation of a mortgage restructuring plan. The initial term of the 514(c) HAP contract renewal must be for a 12 month period. The term of the contract may be extended for a time necessary to facilitate the restructuring process. However, where 514(c) contracts are extended beyond 12 months, rents will be reduced to the comparable market rents in accordance with Section 401.600 of the September 11, 1998 interim rule.

The PHA must execute a 12-month HAP contract under Section 514(c) of MAHRA (attachment A) with the Mod Rehab owner at existing rent levels. A rider to the HAP contract will be published by HUD at a later date. The rider must be executed either at the time the renewal HAP contract is executed or as soon as practicable after execution. The PHA must send a copy of the HAP contract to the appropriate Public Housing HUB Director or Program Center Coordinator within five calendar days of contract execution.

B. HUD FIELD OFFICE ACTION

The HUD Office of Public Housing HUB Director or Program Center Coordinator must forward a copy of the executed 514(c) HAP contract to the Director of the Multifamily HUB or Program Center. The Office of Public Housing HUB or Program Center staff must review the request for annual budget authority sent by the PHA, calculate the total amount of funding required for the 12-month renewal and the number of units that will be renewed. The information must then be forwarded to the Financial Management Center (FMC).

C. FMC ACTION

The FMC must follow procedures outlined in PIH Notice 99-14 on fund reservation and HUDCAPS input.

_____/s/_____
Harold Lucas, Assistant Secretary
for Public and Indian Housing

Attachment